

Interpretive Guidance Questions – Discussed at Workshop, 2014

A-11. Question: If soil samples could not be taken due to snow on the ground how soon must the risk assessor return to take samples?

Response – Soil samples must be collected as soon as reasonably possible. The Department is proposing a that this be done no later than June 1st.
(7/22/13)

A-12. Question: Should the area of bare soil and the location of bare soil be recorded in the Risk Assessment Report?

Response – Yes, in the 2012 HUD Guidelines pages 5-21 and 5-22 it discusses the need to record the number and size of areas of bare soil. Pages 5-34 and 5-35 states that a site plan sketch should be made to identify the location of areas of bare soil in the yard.
(7/26/13)

A-13. Question: Is a risk assessor required to sample soil when it is unfeasible due to weather conditions (snow cover, rain, etc.)?

Response - Yes. Soil assessment is a required component of a risk assessment. When weather conditions do not permit sampling the assessor must arrange to return at another time, sample, and include results of analyses in final report or by addendum.

A-19. Question: Is Dust sampling still necessary if no positives are found with XRF instrumentation during a lead-based paint risk assessment?

Response - Yes. Regardless of whether lead-based paint is identified on the property, dust sampling is still required (6 room minimum in Michigan 325.99.404(5)), in order to rule out contamination by other routes such as tracking from the exterior, hobby-related contamination, adjacent property contamination and other possible sources. Dust wipe sampling is a required part of all lead-based paint risk assessments.

A-29. Question: Do risk assessors need to determine the cause of the paint deterioration and include that information in the risk assessment report?

Response – Yes, the 2012 revised HUD Guidelines state: “The risk assessor must determine, to the extent practicable, and record on Form 5.2, or similar form, whether the paint deterioration has been caused by a moisture problem, friction or abrasion, impact, deteriorated or damaged substrate, severe heat, or some other existing building deficiency. These conditions should be corrected before repainting. The type of deterioration (i.e., blistering, flaking, etc.) may yield information about necessary hazard control treatments. For example, if the type of deterioration is commonly caused by moisture in the substrate, the moisture problem will need to be addressed before the paint can be stabilized.”
(07/2613)

A-30. Question: What is the difference between On-going Monitoring and Re-evaluation?

Response –

On-going monitoring is the responsibility of the home owner, property owner, or building manager. The residence should be visually inspected paying particular attention to areas where enclosure, encapsulation, or interim controls were done. If there is evidence that any of lead

hazard control procedures have failed, then actions should be taken to correct the problems. This should be done at least once a year. See Revised HUD Guidelines 2012, page 6-9 under Visual Assessment heading.

Revaluation is to be done by a certified risk assessor and essentially is a follow-up risk assessment. The initial risk assessment should be reviewed, if possible, and any new hazards identified should be eliminated. The re-evaluation should be done every two years unless certain conditions are met. See Revised HUD Guidelines 2012 pages 5-94 to 5-98 for more details.

A-35. Question: Can a limited or “partial” Inspection be performed for lead abatement purposes?

Response has changed: In 2013 the Response stated that a partial inspection could be performed for abatement purposes if the request was made in writing to the department and approved. After further research and discussion the department has change the Response to:

Response – No, limited or “partial” inspections will not be permitted for abatement purposes. In the 2012 HUD Guidelines Chapter 5 Section 1.A.5.a (page 5-13) it says:

Testing the paint of only certain surfaces for lead is often used before rehabilitation or other renovation or maintenance activities. If only certain paint surfaces are to be disturbed, it may make sense to test them in order to know whether the paint is lead-based paint and thus whether full lead-safe work practices are needed during the work.

The indication is that limited paint testing is only for the purposes of rehabilitation, renovation, or maintenance. For abatement purposes a full and compliant lead-based paint inspection must be done.
(Revised 8/7/14)

~~**Response**—Yes, a certified lead identification professional may apply to the section in writing (which may be mailed, faxed or emailed), for a waiver of normal rules to conduct a limited scope inspection of a dwelling to accommodate the individual needs of a client. The smallest unit of a dwelling for which an application may be made is one room. The applicant must provide information deemed necessary by the department when making the application and must justify the circumstances necessitating a limited scope identification activity.~~

~~Even limited in scope, an inspection must meet the objectives identified in its definition. An inspection is defined at MCL 333.5457(4) as:~~

~~*“A SURFACE BY SURFACE INVESTIGATION TO DETERMINE THE PRESENCE OF LEAD-BASED PAINT IN TARGET HOUSING OR CHILD OCCUPIED FACILITIES AND THE PROVISION OF A REPORT EXPLAINING THE RESULTS OF THE INVESTIGATION”.*~~

~~The limitations of the inspection must be made clear in the resulting report and the homeowner urged not to generalize any information contained therein past the specific areas tested.
(7/18/13)~~

A-36. Question: Can a partial or limited lead paint inspection be done for RRP renovation projects?

Response – The 2012 Revised HUD Guidelines allow for “Selective Testing” (Page 5-13), but it

indicates it is only allowable for “Rehabilitation or other renovation or maintenance activities.” The State of Michigan does not have authority to regulate renovation projects, but the State does have the authority to regulate lead inspectors and risk assessors that do the testing. The State also regulates what constitutes a lead inspection. The Michigan Lead Abatement Act 333.5457(4) defines an inspection as:

“a surface-by-surface investigation to determine the presence of lead-based paint in target housing or child-occupied facility, and the provision of a report explaining the results of the investigation.”

To perform a limited lead paint inspection in Michigan the certified lead identification professional must apply to the section in writing (which may be mailed, faxed or emailed), for a waiver of normal rules to conduct a limited scope inspection of a dwelling to accommodate the individual needs of a client for a renovation project. The smallest unit of a dwelling for which an application may be made is one room. The applicant must provide information deemed necessary by the department when making the application and must justify the circumstances necessitating a limited scope identification activity. The limitations of the inspection must be made clear in the resulting report and the homeowner urged not to generalize any information contained therein past the specific areas tested.

(9/6/13)

B-2. Question: Can Tyvek or fanfold be considered the abatement enclosure material so that a non-certified subcontractor may be used to install siding and wrap exterior components?

Response—No, the Department has determined, after researching the Revised HUD Guidelines of 2012, that Tyvek and fanfold do not meet the requirements of Enclosure. If an exterior abatement project requires the installation of siding, then the whole project from surface prep, to Tyvek or fanfold, and the hanging of the siding would need to be done by a certified Supervisors or Workers (with at least one Supervisor present) working for a certified Lead Abatement Contractor company. See 2012 HUD Guidelines Chapter 12 page 12-31, Appendix 7.2, page 7.2-1 letter F, and page App 7.2-7 number 19.

(7/13)

B-5. Question: May non-certified people (i.e. professional cleaning services) perform cleaning of work areas after abatement work has been completed, and prior to final clearance?

Response – No. Rule 406 (R325.99406(2)) of the Lead Hazard Remediation rules states that, “only an individual certified by the department ...shall conduct lead abatement activities”. Abatement activities are defined in the Lead Abatement Act of 1998 (MCL 333.5453(1)(a)) as, “the removal of lead-based paint and lead-contaminated dust,..., and all preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures.”

Therefore, cleaning of a lead **abatement** site prior to final clearance sampling is considered part of an abatement activity by the above definition, and only persons certified as lead abatement workers or supervisors may perform this activity. Third-party cleaning firms may perform cleaning functions at an abatement project, but the persons doing so must be certified by the department.

Conversely, “supercleaning” of homes where lead-containing dust is to be cleaned up, but not as part of an abatement project, may be done by adequately trained persons. The minimum

requirement for training would be the EPA Certified Renovator training. Certified abatement workers and supervisor would also be qualified to do this work. This activity is defined as an interim control, and is subject to the requirements of rule 325.99406(1). (09/04/2001, amended 03/01/2005, as amended 07/12/13)

Other Things to Discuss

1. Shooting an XRF through carpets: Don't do it. It is not a documented procedure for an XRF. Flame retardants in carpets and carpet pads can cause some XRF's to read as a false positive.
2. Taking enough soil samples: Still an issue. Many reports we see have zero or only one. Follow up visits on some have shown there was bare soil present that should have been sampled. Also, the HUD Guidelines do allow for sampling non-bare soil if a request is made by the family over concerns of children that play in the yard.
3. Risk Assessment vs. Risk Assessment Plus vs. Inspection/Risk Assessment Combination: Some Risk Assessors have had issues with funding agencies wanting only a Risk Assessment, but also want other surfaces that will be impacted to be tested. The agency only wants to pay for a Risk Assessment not a combination.

The 2012 HUD Guidelines define a risk assessment on page 5-11:

Risk assessments are on-site investigations to determine the existence, nature, severity, and location of lead-based paint hazards accompanied by a report explaining the results and options for reducing lead-based paint hazards (40 CFR 745.227(d)(11)) (see Appendix 6). A lead-based paint hazard is any condition that causes exposure to lead from dust-lead hazards, soil-lead hazards, or lead-based paint that is deteriorated, or present in chewable surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects.

On page 5-53 it goes on to say:

Generally, risk assessors do not test intact paint for lead content. However, if certain areas of intact paint are expected to be disturbed in the future due to rehabilitation, renovation, maintenance, or other work **that may disturb the paint**, the paint in those areas should be analyzed by XRF testing or paint chip analysis. The HUD Lead Safe Housing Rule requires that painted surfaces in HUD-assisted target housing that are to be disturbed or replaced during Federally assisted rehabilitation must be tested for lead or presumed to be lead-based paint 24 CFR 35.930.

A risk assessment does include testing paint on friction and impact surfaces as potential hazards, and the a risk assessment should include testing surfaces that are planned to be disturbed by work activities, but that does not mean the agency can require the risk assessor to test all surfaces in the house because they may all be disturbed and still call it a risk assessment and pay only for an inspection. This issue will need more internal discussion before and final guidance is established. Please send and comments or input to Jay Wagar at wagarj@michigan.gov or call 517-335-8466.